IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8151 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DEPUTY EXECUTIVE ENGINEER

Versus

GOVIND PUNABHAI

Appearance:

1. Special Civil Application No. 8151 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 02/04/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. P.H. Pathak, the learned advocate appearing for the respondent workman. With the consent of the learned advocates for the parties, the matter has been taken up for final

hearing today itself.

Heard learned advocate Mr. Munshaw for the petitioner and Mr. Pathak for the respondent workman. By way of this petition, the petitioner has challenged the award made by the labour court, Junagadh in Reference (LCJ) No. 36 of 1994 dated 13th March, 2001 wherein the labour court has granted reinstatement with continuity of service with full back wages for the intervening period. Learned advocate Mr. Munshaw has submitted that the respondent workman was serving with the petitioner Board on the post of Valveman on daily wage basis with effect from 19.1.1989 and he was discharged from service on 1.8.1992 and even though there may be technical breach of section 25-F on the part of the petitioner, the award of full back wages for the intervening period is required to be quashed and set aside and the petitioner is not entitled to full back wages for the intervening period.

Learned advocate Mr. Pathak appearing for the respondent workman has submitted that the respondent was appointed as Valveman with effect from 19.1.1989 and his services were terminated on 1.8.1992 and during that period, the workman had worked continuously with the petitioner board and had completed 240 days' work continuously. However, at the time of terminating his services, the petitioner board has not complied with the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 and, therefore, the labour court was right in granting reinstatement in favour of the respondent workman and in granting full back wages for the intervening period as the workman has remained out of work during the intervening period and, therefore, this court should not interfere with the award of reinstatement and back wages. He has however submitted that if the Court feels that the grant of back wages is on higher side to some extent, then, the Court may consider that aspect and may reduce it reasonably.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court. Before the labour court, the respondent workman was examined at Exh. 30 but his oral evidence has remained unchallenged since he was not cross examined by the petitioner. Second aspect is that before the labour court, the petitioner has not produced any oral and documentary evidence to controvert the statements made by the workman in his statement of claim and the petitioner has also not made any submissions in the form of arguments before the labour court. These were the facts which were taken into

consideration by the labour court while passing the award in question. This aspect has been considered by the labour court in para 5 of the award in question that the respondent has submitted one application for production at Exh. 16 to direct the petitioner to produce muster roll for the relevant period, pay register and vouchers for the relevant period and also to produce the list of newly daily recruited daily wagers. Labour court has passed order on that application and the petitioner was directed to produce the said documents but no documentary evidence has been produced by the petitioner in response to the said order passed by the labour court on an application of the respondent workman and no reply to the said application has been filed by the petitioner. Thereafter, the labour court has considered undisputed period of working of the respondent workman for the period from 19.1.1989 to 1.8.1992 and according to the labour court, this period of working of the respondent was not in dispute. The labour court has considered that since the period of aforesaid working of the respondent has not been in dispute, there was non compliance of the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947. These aspects of the matter were considered by the labour court that no documentary evidence has been produced by the petitioner and the oral evidence of the workman has also gone unchallenged, uncontroverted and further no oral evidence was led by the petitioner before the labour court and, therefore, the labour court has come to the conclusion that the said termination dated 1st August, 1992 is in violation of the mandatory provisions of section 25-F of the Industrial Disputes Act,1947 and on that ground, the labour court has made an award of reinstatement. While considering the aspect of back wages, the labour court has considered the affidavit of the respondent workman at Exh. 13 and it was further considered that the petitioner has not controverted the statement made in the affidavit at Exh. 13 by producing any positive evidence to show that the workman has been gainfully employed during the intervening period or that he has been earning something during the intervening period and, therefore, considering this aspect of the matter, the labour court has granted full back wages for the intervening period while ordering for reinstatement of the respondent workman.

According to my opinion, in view of the non compliance of the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 as stated hereinabove, reinstatement does not require any interference of this Court and no submissions were made by Mr. Munshaw as regards the award of reinstatement of the respondent

workman. He has submitted that the award of full back wages for the intervening period is on higher side and it should reasonably be reduced. According to his submissions, the matter has remained pending before the labour court for a period of about seven years and the the petitioner is a public body and considering the pendency of the matter for such a long period, back wages are required to be reduced reasonably.

Considering the submissions made by the learned advocates for the parties, according to my opinion, award in question is required to be modified only in respect of back wages since the petitioner is a public body. According to my opinion, it would be just and proper to reduce back wages to the extent of 25 % and to award only 75% of the back wages for the intervening period. If the award in question is modified to that extent without disturbing the award of reinstatement in service with continuity of service, it would met the end of justice.

Accordingly, for the reasons recorded hereinabove, this petition is partly allowed. The award made by the labour court Junagadh in Reference (LCJ) NO.36 of 1994 dated 13.3.2001 is modified in so far as it relates to back wages to the effect that instead of full wages as has been directed by the labour court under the impugned award, petitioner is directed to reinstate the respondent workman in service with continuity of service with 75 per cent of back wages for the intervening period. It is clarified that this Court has not altered or modified the award of reinstatement in service with continuity of service. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.24.4.2002.

This order was dictated in the open Court in presence of the learned advocates for the parties. At that time, learned advocate Mr. Munshaw has made a mention that he will pursue the petitioner to agree for grant of back wages to the extent of 50 per cent for the intervening period and this Court may consider it and reduce it from 75 per cent to 50 per cent for the intervening period. At that time, learned advocate Mr. Pathak for the respondent has also agreed that if the petitioner will give consent for grant of 50 per cent of back wages for the intervening period, then, he will accept the same.

In light of the discussion made at the time of completing the dictation on 2nd April, 2002, today, this

24th April, 2002 has placed on record copy of the letter dated 8th April, 2002 before the judgment could be signed. As per the said letter, the petitioner Board is agreeing to pay 50 per cent of the back wages for the interim period to the respondent workman and has also requested the learned advocate Mr. Munshaw to make this statement before this Court on the basis of the said letter. Copy of the said letter dated 8th April, 2002 is ordered to be taken on record. Learned advocate Mr. Pathak has also agreed to accept back wages to the extent of 50 per cent for the intervening period instead of 75 per cent as has been granted by this court as aforesaid. Thus, both the learned advocates are agreeable for reducing back wages from 75 per cent to 50 per cent for the intervening period. Therefore, order passed by this court on 2nd April, 2002 in so far as it relates to back wages to interim period, same is reduced to 50 per cent from 75 per cent for the intervening period. It is clarified that this modification has been made on the basis of the consent given by both the learned advocates qua back wages alone and rest of the part of this order has not been disturbed by this Court.

2/24.4.2002. (H.K. Rathod,J.)

Vyas